

ENERGY INDEPENDENCE, OFFICE OF[350]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 469.3 and 2008 Iowa Acts, chapter 1144, the Director of the Office of Energy Independence hereby gives Notice of Intended Action to amend Chapter 3, "Iowa Power Fund Board and Due Diligence Committee," and Chapter 4, "Iowa Power Fund Financial Assistance," Iowa Administrative Code.

The proposed amendments clarify the electronic recording of board and committee proceedings; amend the percentage of the fund available for administrative costs, in accordance with Iowa Code section 469.10(2); and establish a process for considering requests to keep information confidential, in accordance with Iowa Code section 469.9(6).

Any interested person may make written suggestions or comments on these proposed amendments on or before March 3, 2009. Such written materials should be directed to Sean Bagniewski, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-4225; or by electronic mail to sean.bagniewski@iowa.gov.

These proposed amendments which do not impose statutory requirements are subject to a petition for waiver or variance under Iowa Code section 17A.9A and 350—Chapter 55.

These amendments are intended to implement 2008 Iowa Acts, chapter 1144.

The following amendments are proposed.

ITEM 1. Amend paragraph 3.3(2)"c" as follows:

c. Open-session ~~and closed-session~~ proceedings ~~shall~~ may be electronically recorded. Minutes of open meetings shall be available for viewing at the office or through the office's Web site.

ITEM 2. Amend subrule 4.4(3) as follows:

4.4(3) The office shall utilize up to ~~1-5/10~~ 3 5/10 percent of the amount appropriated from the fund for a fiscal year for administrative costs.

ITEM 3. Renumber rules 350—4.9(469) to 350—4.11(469) as 350—4.10(469) to 350—4.12(469).

ITEM 4. Adopt the following new rule 350—4.9(469):

350—4.9(469) Confidentiality.

4.9(1) *Period of confidentiality.* All information contained in an application for financial assistance submitted to the board shall remain confidential while the board is reviewing the application, processing requests for confidentiality, negotiating with the applicant, and preparing the application for consideration by the board.

4.9(2) *Release of information for technical review.* The board may release certain information in an application for financial assistance to a third party for technical review. If the board releases such information, the board shall ensure that the third party protects such information from public disclosure.

4.9(3) *Applicant request for confidentiality.* An applicant may make a written request to the board to keep confidential certain details of an application, contract, or the material submitted in support of an application or a contract. If the request includes a sufficient explanation as to why the public disclosure of such details would give an unfair advantage to competitors, the board shall keep such details confidential.

4.9(4) *Criteria for determining confidential treatment.* In determining whether to grant a request for confidential treatment of applicant information, the board must appropriately balance an applicant's need

for confidentiality against the public's right to information about the board's activities. The board may consider the following:

- a.* The nature and extent of competition in the applicant's industry sector.
- b.* The likelihood of adverse financial impact to the applicant if the information were to be released.
- c.* The risk that the applicant would locate in another state if the request is denied.
- d.* Any other factors the board may reasonably consider relevant.

4.9(5) *Confidentiality decision.* The board shall notify an applicant in writing of its decision regarding the confidentiality of an application, contract, or supporting materials. Once the board has notified the applicant of its decision, any information not deemed confidential by the board shall be made publicly available. Any information deemed confidential by the board shall be kept confidential by the office and board during and following the administration of a contract executed pursuant to a successful application.

4.9(6) *Withdrawal of application.* If the board denies an applicant's request for confidentiality, the applicant may withdraw an application and any supporting materials. The board shall not retain any copies of the application and supporting materials. Upon notice that an application has been withdrawn, the board shall not release a copy in response to a request for records pursuant to Iowa Code chapter 22.